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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 30 1992

Federal Communications Commission
Office of the Secretary

In the Matters of)

Petition for Rule Making of the)
Utilities Telecommunications)
Council for Amendment of Parts 2,)
21, and 94 of the Commission's)
Rules to Accommodate Private)
Microwave Systems in the 1.71-1.85)
GHz Band and in Bands Above 3 GHz)

RM- _____

Redevelopment of Spectrum to)
Encourage Innovation in the Use of)
New Telecommunications Technologies)

ET Docket 92-9

TO: The Commission

RESPONSE OF AMERICAN PERSONAL COMMUNICATIONS
TO REPLY OF UTILITIES TELECOMMUNICATIONS COUNCIL

On April 13, 1992, American Personal Communications ("APC")^{1/} filed its initial procedural comments on a Petition for Rule Making filed on March 31, 1992 by the Utilities Telecommunications Council ("UTC"). In its Petition, UTC asked the Commission to modify its rules for private microwave operations in the 3.7-4.2, 5.925-6.425, and 10.7-11.7 GHz bands and to explore the shared use of the 1.71-1.85 GHz band by federal government and private users. In its Comments, APC supported full consideration of UTC's proposals and, to facilitate this consideration, suggested that the Commission

^{1/} American PCS, L.P., d/b/a American Personal Communications. Pursuant to Section 1.405(c) of the Commission's Rules, 47 C.F.R. § 1.405(c) (1991), APC hereby seeks leave to file this Response, which is necessary because of matters raised for the first time in UTC's Reply.

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accept comments on those proposals in the course of ET Docket 92-9, to which UTC's proposals relate.

Because APC supports the consideration of UTC's proposals, APC was rather surprised to find in UTC's "Reply" to APC's Comments, filed April 20, 1992, that APC's support apparently was quite unwelcome to UTC. UTC's "Reply" does not merit a full response, but two points bear mention.

First, UTC takes issue with the fact that APC filed its Comments quickly. APC is puzzled by UTC's objections on this score. APC filed its initial procedural comments quickly in order to facilitate the consideration of UTC's proposals at the earliest possible date. If the need for the Commission to address these issues is as critical as UTC would lead the Commission and others to believe, UTC should welcome early support for consideration of its proposals. UTC's insistence that APC and other parties wait to file comments until its Petition had been placed on public notice (assuming that it will be placed on public notice) appears to be inconsistent with any motive other than delay. Moreover, if APC had waited until the time UTC suggested to file its Comments -- i.e., 30 days after UTC's Petition had been put out on public notice -- APC's suggested procedure for dealing with UTC's proposal would have been moot, or at least would have been subjected to very substantial delay.

Second, UTC takes issue with APC's suggestion that UTC's Petition be folded into ET Docket 92-9 for comment

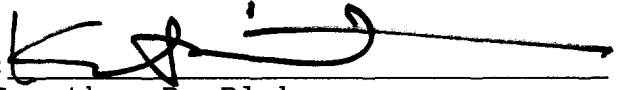
rather than dealt with as a separate docket. This objection also is somewhat curious to APC because UTC itself suggested a similar process in its Petition. "In the interest of expediting this process, the Commission could issue a Further Notice of Proposed Rulemaking in ET Docket No. 92-9, and request interested parties to file unified comments on both the original NPRM and the Further Notice." UTC Petition at 6 n.2; see Reply at 6-7. APC's proposed procedure would permit the same result of facilitating the public's opportunity to comment on UTC's proposals in the context of Docket 92-9 without awaiting issuance of a Further Notice. The public notice suggested by APC could, of course, be published in the Federal Register and otherwise conform to the Administrative Procedure Act ("APA"). Because the public would have effective notice of UTC's proposals prior to the filing deadlines in ET Docket 92-9, we believe this procedure would effectively satisfy the requirements of the APA.^{2/}

^{2/} If the Commission does believe it is required to issue a more formal notice to accommodate UTC's proposals, it could do so in several ways. It could, as UTC requests, issue a Further Notice in this docket. It also could incorporate UTC's proposals in a Notice of Proposed Rule Making for PCS, because PCS is likely to be the first service allowed to use frequencies considered by ET Docket 92-9. Although APC views either of these procedures as vastly less preferable than the approach described in APC's Comments, either procedure could be less time-consuming than institution of a separate docket.

The Commission should consider UTC's proposals in
the context of ET Docket 92-9.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

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April 30, 1992

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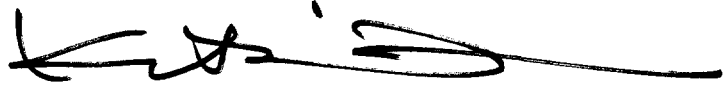
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A handwritten signature in black ink, appearing to read 'Kurt A. Wimmer', written over a horizontal line.

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